

**ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009**  
**COMMITTEE STATEMENT**  
**LB35**

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**Hearing Date:** Friday February 20, 2009  
**Committee On:** Judiciary  
**Introducer:** Ashford  
**One Liner:** Adopt the Violence Prevention Act, prohibit certain gang activity, and change certain firearm provisions

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Ashford, Christensen, Coash, Council, Lathrop, Lautenbaugh, McGill, Rogert  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Proponents:**

Sen. Brad Ashford  
Don Kleine  
Thomas Warren  
Dr. Linda Lander, SD  
Bruce Ferrell  
Jack Cheloha

**Representing:**

Introducer  
Douglas County Attorney  
Urban League of Nebraska  
College of Public Health, UNMC  
Midwest Gang Investigators Assoc.  
City of Omaha

**Opponents:**

**Representing:**

**Neutral:**

Timothy H. Robinson

**Representing:**

School of Criminology and Criminal Justice

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**Summary of purpose and/or changes:**

Legislative Bill 35 is a bill to adopt the Violence Prevention Act, prohibit certain gang activity, and change certain firearm provisions. The intent is to prevent and reduce violent crimes in the state. Several of the original provisions of LB 35 were amended into LB 63.

Committee Amendment AM 836 would replace the original provisions of LB 35 with provisions of several court related bills including LB 40, LB 46, LB 47, LB 118, LB 305, LB 332, LB 333, LB 344, LB 351, LB 352, LB 353, LB 354, LB 433 and LB 669. Some bills were amended by the Committee before being included in AM 836. The following summaries describe the amendments.

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**Explanation of amendments:**

--Legislative Bill 40 (Flood) would clarify the language in Sec. 25-1144, which describes the form of a motion for a new trial. The bill would also update a statutory reference to the Uniform Licensing Law in Sec. 27-1201(2)(a) to reflect a change in name to the Uniform Credentialing Act.

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Testifiers for LB40:

Proponents:

Matt Boever, Introducer

--Legislative Bill 46 (Wightman) would amend Sec. 30-2485 and Sec. 30-2487 to clarify that the actions taken and expenses incurred in the discharge of the statutory duties of a personal representative are properly considered costs and expenses of administration of the estate.

Testifiers for LB46:

Proponents:

Sen. John Wightman, Introducer

Susan Spahn, NE State Bar Assoc.

--Legislative Bill 47 (Wightman) would amend Sec. 30-2302, which governs the distribution of a decedent's property in the absence of a will. The change would update the fixed dollar lump sum that a surviving spouse is entitled to before the estate is divided up among the decedent's surviving parents or surviving children if a will does not exist. Currently, the amount is \$50,000. LB 47 would increase the fixed lump sum payment to the first \$100,000 of the estate. The change would account for inflation that has occurred since the last adjustment to the amount was made in 1980.

LB 47 was advanced to general file as amended by Committee Amendment AM 240 which would incorporate the provisions of LB 46 and LB 118.

Testifiers for LB47:

Proponents:

Sen. John Wightman, Introducer

--Legislative Bill 118 (Wightman) would amend Sec. 30-24,125 and Sec. 30-24,129 to allow for succession of personal property by affidavit for estates with personal property not exceeding fifty thousand dollars and for estates with real property not exceeding thirty thousand dollars in value.

Testifiers for LB118:

Proponents:

Sen. John Wightman, Introducer

Susan Spahn, NE State Bar Assoc.

--Legislative Bill 305 (Council) would amend Sec. 25-1628 to add state identification card holders to the group of people included in initial jury pools. This bill is based on a recommendation from the Nebraska Minority Justice Committee's Minority and Justice Task Force, a joint effort of the Nebraska Supreme Court and the Nebraska State Bar Association.

Current source lists for jury pools in Nebraska consist of registered voters and driver's license holders. This bill would expand the source lists in order to reduce racial disparities found on many Nebraska Juries.

Under the bill, the Department of Motor Vehicles would have to make available to each jury commissioner a list of the names, birth dates and addresses of all state identification card holders. If a county treasurer has an automated procedure for developing lists of state identification card holders, the jury commissioner may request the list from the county treasurer.

The bill was advanced to general file without amendment.

Testifiers for LB305:

Proponents:

Sen. Brenda Council, Introducer

Riko Bishop, NE Minority Justice Committee

Dr. Elizabeth Neeley, NE Minority Justice Committee

Coleen Nielsen, NE Criminal Defense Attorneys

Elaine Menzel, NE Association of County Officials

--Legislative Bill 332 (Ashford) would amend several statutes regarding the county courts. The bill was brought to the Legislature by the County Judges Association and includes the following provisions:

- The bill would correct vagueness in the term "court" in the statute allowing for the appointment of a special prosecutor by any of the courts in the state upon the request of the county attorney for good cause. The bill would also add conflict of interest to the list of causes, which currently includes absence, sickness and disability.

- The bill would provide that a lower court would not have to swear in a certified interpreter who has been sworn in by the Supreme Court;

- The bill would allow any person having a judgment rendered by a county court to request the court clerk to issue execution on the judgment and direct the execution on the judgment to any county in the state. Such person may request that any aid to execution be directed to any county without the necessity of filing a transcript in the receiving county and any hearing or proceeding would be heard in the court in which the judgment was originally rendered;

- The bill would provide that upon the filing of a petition for adoption, the hearing would be held not less than four weeks nor more than eight weeks after the filing of the petition unless any party for good cause shown requests a continuance of the hearing or all parties agree to a continuance;

- The bill would allow the county court to either provide a caregiver information form to foster parents to report on the status of the child in their care or direct the applicant to the Supreme Court Internet web site where they could download the form;

- The bill would add school personnel to the list of holders of confidential records of a child who is in the custody of the state, which records may be shared with individuals and agencies who have been identified in an authorized court order. It would also add to the list of those who may be identified in a juvenile court order, court appointed special advocate (CASA) volunteers and other individuals and agencies, to receive such records if the court finds that it would be in the best interest of the juvenile; and

- The bill would add school districts and school personnel to the list of those who would be required to cooperate with requests of the CASA volunteer.

The provisions of LB 332 in AM 836 to LB 35 do not include sections 4, 5 and 6 of the original bill. Based on issues that were discussed during the hearing the Committee did not include these sections in the bill that was advanced.

Testifiers for LB332:

Proponents:

Stacey Trout, Introducer

Patrick McDermott, County Judges Assoc.

William Mueller, NE State Bar Assoc.

Scott Tingelhoff, NE County Attorney Assoc.; Saunders County Attorney

Janice Walker, NE Supreme Court

Jeremiah Luebbe, Credit Management Services, Inc.

--Legislative Bill 333 (Ashford) would increase the Supreme Court Automation Fee from the current \$6 per case to \$7 per case. The automation fee funds the Court's JUSTICE case and financial management system for the state trial courts. The increase is required for (1) an expected increase in the Court's annual retainer fee to the Office of the CIO which covers the Court's portion of the ninety-four AS-400 computer systems that provide hardware and maintenance for trial courts; and (2) covering the conversion of Douglas County District Court and Separate Juvenile Court to the statewide JUSTICE system within the next year including the additional costs for the 175 court staff and judges to be equipped with personal computers, printers and other hardware and software items.

The provisions of LB 333 in the AM 836 to LB 35 do not include sections 1, 3 and 4 of the original bill. The Committee also amended the proposed increase of the Automation fee from a two dollar increase to a one dollar increase.

Testifiers for LB333:

Proponents:

Sen. Brad Ashford, Introducer

Mike Heavican, NE Supreme Court

William Cassel, Supreme Court Technology Committee

John Gerrard, NE Supreme Court

Robert Hillis, NE State Bar Assoc.

Janice Walker, NE Supreme Court

Opponents:

Jeremiah Luebbe, Credit Management Services, Inc.

Patrick Heng, NE Collectors Assoc.

Neutral:

Sen. Lavon Heidemann, self

--Legislative Bill 344 (Ashford) would amend Sec. 25-3007 and Sec. 25-3008 to transfer the administration of the Civil Legal Services Program from the State Court Administrator to the Commission on Public Advocacy. The Civil Legal Services Program and the accompanying fund provide grants to civil legal service providers for the delivery of free services to eligible low-income persons.

Testifiers for LB344:

Proponents:

Stacey Trout, Introducer

Janice Walker, NE Supreme Court

James Mowbray, Commission on Public Advocacy

--Legislative Bill 351 (Lautenbaugh) would amend the Limited Liability Company Act to clarify that a judgment entered by a court against a Limited Liability Company may only be entered against the transferable interests in the LLC. This would force the Limited Liability Company to pay any distributions to the judgment creditor up to the amount of the judgment owed rather than making these distributions to the member of the LLC that owes the debt. LB 351 clarifies that a judgment creditor is prevented from receiving any management interests in the company. Today, 48 states and the Uniform Limited Liability Company Act have similar charging order statutes. The bill clarifies that this would apply to all LLC's, even those with a single member as allowed under Nebraska Law.

Committee Amendment AM 533 to LB 351 would clarify that any third party making a distribution or a payment directly to a member of the LLC would not be held liable to the judgment creditor if they did so at the direction of the LLC.

Testifiers for LB351:

Proponents:

Sen. Scott Lautenbaugh, Introducer

Nicole Hanson, Fraser Stryker PC LLO

William Mueller, NE State Bar Association

--Legislative Bill 352 (Lautenbaugh) would amend Sec. 25-505.01 to allow for delivery of a summons by a commercial courier such as FedEx or UPS. Under current law, certified mail service is allowed if done by certified mail through the U.S. Postal Service.

The Committee advanced an amended version of the bill in AM 836. The amendment would clarify the intent of the bill by placing the commercial courier provision into a sub-section separate from the certified mail provision in sub-section (c) and referring to a federal statute that authorizes commercial courier companies. The companies currently authorized under 26 U.S.C. Sec. 7502(f)(2) include Airborne Express, DHL Worldwide Express, Federal Express and United Parcel Service.

Testifiers for LB352:

Proponents:

Sen. Scott Lautenbaugh, Introducer

William Mueller, NE State Bar Assoc.

--Legislative Bill 353 (Lautenbaugh) would amend Sec. 34-301, which provides for the commencement of a boundary resolution case, by changing "petition" to "complaint" to make this statute consistent with other civil procedure statutes.

Testifiers for LB353:

Proponents:

Sen. Scott Lautenbaugh, Introducer  
William Mueller, NE State Bar Assoc.

--Legislative Bill 354 (Lautenbaugh) would provide for the right of a cross-appeal to a responding party of any review under the Administrative Procedure Act. A respondent wanting to file a cross-appeal must file the cross-appeal within thirty days of being served with the summons and petition for review.

Testifiers for LB354:

Proponents:

Sen. Scott Lautenbaugh, Introducer  
Katie Zulkoski, NE State Bar Association

--Legislative Bill 433 (Lathrop) would amend provisions that were enacted through LB 1014 in 2008. The Committee advanced an amended version of the bill in AM 836 which strikes section 1 of the original LB 433.

Under current law, the district court has exclusive original jurisdiction over misdemeanor cases that arise from the same incident as a charged felony. LB 433 would amend the law to expand the district court's exclusive jurisdiction to concurrent jurisdiction with the county court over misdemeanor cases that arise from the same incident as a charged felony.

This section of AM 836 includes an emergency clause.

Testifiers for LB433:

Proponents:

Sen. Steve Lathrop, Introducer  
William Mueller, NE State Bar Assoc; NE District Court Judges Assoc.

--Legislative Bill 669 (Coash) would create new judgeships. The Committee advanced an amended version of the bill in AM 836 which creates one new district court judgeship in Lancaster County.

This section of AM 836 includes an emergency clause.

Testifiers for LB669:

Proponents:

Sen. Colby Coash, Introducer  
Paul Merritt Jr., Lancaster County District Judges  
Susan Strong, Lancaster County Court  
Randall Rehmeier, 2nd Judicial District Court  
Todd Hutton, 2nd Judicial Dist; County Judges  
Vernon Daniels, Separate Juvenile Court, Douglas County  
Robert Hillis, NE State Bar Association  
Mark Krieger, Lincoln Bar Association  
Joe Kelly, Lancaster County Attorney

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Brad Ashford, Chairperson